IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

Cr. Appeal No. 530 of 2003

Date of Decision : 22.5.2007

Kanshi Ram …Appellant.

Versus:

State of H. P. …Respondent.

***Coram*:**

The Hon'ble Mr.Justice Surjit Singh, Judge.

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] No

For the appellant: Mr. Anup Chitkara, Advocate

For the respondent : Mr. Som Dutt Vasudeva, Addl. AG with Mr. D. S. Nainta, Dy. A. G.

Surjit Singh, J (Oral).

Appellant is aggrieved by the judgment of the Special Judge, whereby he has been convicted of an offence under Section 20 (C) of the Narcotic Drugs & Psychotropic Substances Act, and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rupees One lac., in default of payment of fine to undergo imprisonment for further period of six months.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

As per prosecution version, the appellant was intercepted while walking along a path at a place called Hurlu Dhar in Kullu district. He was carrying Charas which on being weighed was found to be three kgs. Two samples each weighing 25 grams were separated. One sample was sent to the Chemical Examiner, who found the weight of the entire sample stuff to be 22.295 gms. as against 25 gms. weight that was separated by way of sample. The sample was found to contain 33.66% resin.

The only submission that has been made by the learned counsel for the appellant is that the appellant was put on trial for possessing 3 kgs. Charas, but the Chemical Examiner's report shows that the charas content of the recovered stuff was less than the commercial quantity as notified by the Central Govt. His submission is twofold. According to him, either the scale and / or the weights used by the I. O. were defective or there was some moisture content in the stuff and it is because of this that the sample, which was weighed 25 gms. by the I. O. was found to be only 22.295 gms. when weighed in Chemical Examiner's Laboratory. He says that the entire quantity of the stuff, i.e. 3 kgs., as per prosecution version is required to be reduced in the same proportion in which variation in the weight of the sample as done by the I. O. and the weight recorded by the Chemical Examiner, is there.

The submission is not without substance, may be that either scale / weights used by the Investigating Officer were faulty or there was some moisture content in the stuff and because of that sample stuff which was weighed as 25 gms. at the time of the seizure of the stuff, weighed only 22.295 gms. in the Laboratory. Therefore, the weight of the stuff shall have to be worked out by reducing it in the same proportion as the variation between weight recorded by the I. O. and the weight found in the Laboratory. Now, if 3 kgs. weight is reduced in the aforesaid manner, it comes down to 2 kgs. and 676 gms. Hence, we hold that the quantity of the stuff that was recovered from the appellant was 2.324 kgs.

This Court in Criminal Appeal No. 491 of 2003 (Dharam Pal versus State of H.P.), vide judgment dated 15.5.2007 has held that where the stuff contains 'Charas' i.e. resin of cannabis plant, to certain extent per report of the Chemical Examiner and with respect to the rest of the stuff there is no report by the Chemical Examiner and the report further reads that the stuff contains resin to a certain extent and does not say that the whole of it is 'Charas', as in the present case, (in the present case, report reads that the sample contains content of Charas), the quantity of 'Charas' recovered from an accused, has to be worked out based on the percentage of the resin ('Charas') in the recovered stuff.

Applying the ratio of the aforesaid judgment, we hold that the quantity of 'Charas' recovered from the appellant was only 901 gms. approximately or say lesser than the commercial quantity and, therefore, the sentence part of the judgment of the trial Court, is liable to be modified. The sentence of the appellant, as imposed by the trial Court, assumably under Section 20 (C) of the Narcotic Drugs & Psychotropic Substances Act, is set aside and in place thereof the appellant is sentenced under Section 20 (B) of the Narcotic Drugs & Psychotropic Substances Act. He is sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.20,000/-, in default of payment of fine to undergo rigorous imprisonment for a further period of three months.

Appeal stands disposed of accordingly.

(Surjit Singh), J.

(Sanjay Karol), J.

May 22, 2007
(rana)